



**State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES**

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095

(603) 271-3644 FAX (603) 271-2181

April 9, 2002



John M. Peard
Red's of Jaffrey Inc.
12 River Road
Jaffrey, NH 03452

**NOTICE OF NON-COMPLIANCE and
PERMIT REVOCATION**

**RE: JAFFREY, RED'S OF JAFFREY INC., EXISTING UNDERGROUND STORAGE TANK
FACILITY (UST #0113156) (DES #198912002)**

Dear Mr. Peard:

The New Hampshire Department of Environmental Services ("DES") is hereby notifying you that your facility, located at 12 River Road, Jaffrey, NH is not in compliance with New Hampshire Code of Administrative Rules Env-Wm 1401, Underground Storage Facilities. Failure to achieve compliance with the following five deficiencies within 90 days from the date of this Notice of Non-Compliance and Permit Revocation ("Notice") will result in revocation of your Permit-to-Operate on July 8, 2002. This letter contains important compliance information. Please read it carefully.

1 Env-Wm 1401.04 Registration

Env-Wm 1404.04 requires the owner of an underground storage facility to register the facility and submit in writing any change in facility status within 10 days of the change. An unregistered underground storage tank (UST) approximately 500 gallons in size storing waste oil exists at your facility. This UST must be registered with DES.

2. Env-Wm 1401.10 Financial Responsibility

Env-Wm 1401.10(a) requires that owners of underground storage facilities for oil shall maintain financial responsibility in the minimum of \$1,000,000 per occurrence. Env-Wm 1401.10(c) provides that the financial responsibility requirement may be satisfied if the owner is eligible for reimbursement of costs associated with cleanup of releases from the Oil Discharge and Disposal Cleanup Fund ("the Fund"). Under New Hampshire Code of Administrative Rules Chapter Odb 100-400, Rules for Reimbursement from the Oil Discharge and Disposal Cleanup Fund, Subpart Odb 401.01(b), no reimbursement shall be made from the Fund for any facility at which compliance with part Env-Wm 1401, once achieved, is not maintained. Compliance has not been maintained at your facility. Consequently, the Oil Discharge and Disposal Cleanup Fund is not available to you as a financial responsibility mechanism. Absent an alternative mechanism such as private insurance, you are not in compliance with Env-Wm 1401.10(a). You must provide DES with evidence of financial responsibility in the amount of \$1,000,000 within ninety (90) days from the date of this letter.

3 Env-Wm 1401.31 Operation of Leak Monitoring Equipment

Env-Wm 1401.31(a) requires leak monitoring equipment and devices to be maintained in good working order at all times to continuously perform their original design function and be tested annually for proper operation in accordance with the manufacturer's requirements. The leak monitor's power and warning light were not operational at the time of inspection and must be repaired. No documentation was available showing that the leak monitor had been tested annually for proper operation. The leak monitor must be tested annually and paperwork documenting the test results must be kept on file at the facility.

4. Env-Wm 1401.32 Corrosion Protection for Steel Tanks

Env-Wm 1401.32(b) requires all existing steel USTs to be protected from corrosion no later than December 22, 1998. Env-Wm 1401.32(j) requires that an underground storage tanks system that is not cathodically protected must be permanently closed. The approximately 500-gallon waste oil tank must be permanently closed because it is not protected from corrosion.

5. Env-Wm 412.10 Site Investigation

A Site Investigation report, dated August 14, 2000, documenting groundwater contamination from a petroleum release at this facility, was approved by DES on December 22, 2000. The approval letter required that a Supplemental Site Investigation be prepared to further characterize the extent of the groundwater contamination, and be submitted to DES by April 1, 2001. On April 16, 2001 DES advised you in a letter from Gregory A. Kirby, P.G., that the Supplemental Site Investigation was overdue. To date, DES has not received the requested Supplemental Site Investigation. A Supplemental Site Investigation must be conducted and a report must be submitted to DES.

In accordance with Env-Wm 1401.09(a)(2), the deficiencies cited above must be corrected within 90 days of receipt of this Notice. If compliance is not achieved your permit to operate (UST Permit #0113156) shall be revoked effective July 8, 2002.

In accordance with Env-Wm 1401.07(a), no person shall operate an underground storage facility without a permit issued by DES. Within 30 days from the date of permit revocation (August 7, 2002), the facility shall be closed in accordance with either Env-Wm 1401.17 for temporary closure, or Env-Wm 1401.18 for permanent closure.

Based on the information on non compliance described above, DES believes that this facility poses a potential substantial threat to the surface and groundwater of the state. Therefore, in accordance with RSA 146-C:4 and Env-Wm 1401.09, if compliance as requested above is not achieved within ninety (90) days of the date of this Notice (July 8, 2002), your Permit-to-Operate (UST Permit #0113156) shall be revoked effective July 8, 2002. Within thirty (30) days of the date of permit revocation (August 7, 2002), all regulated substances must be

removed from the UST systems at this facility. If the facility achieves compliance during the ninety (90) day period, it is necessary that documentation be submitted to DES verifying that compliance has been attained.


You have the right to a hearing to contest these allegations before the proposed license action is taken. The hearing would be a formal adjudicative proceeding pursuant to RSA 541-A:31, at which you and any witnesses you may call would have the opportunity to present testimony and evidence as to why the proposed action should not be taken. All testimony at the hearing would be under oath and would be subject to cross-examination. If you wish to have a hearing, one will be scheduled promptly.

RSA 541-A:31 III(e) provides that you have the right to have an attorney present to represent yourself at your own expense. If the Permit is an occupational license, under RSA 541-A:31, III(f) you have the right to request DES to provide a certified shorthand court reporter at your own expense. **Such request must be submitted in writing at least 10 days prior to the proceeding.**

You may waive your right to a hearing. If you waive the hearing, DES is prepared to proceed with the actions as stated above. You should notify DES of your decision by filling out and returning the enclosed form.

If there are any questions concerning the above, you may contact Mr. Lynn A. Woodard, P.E., at the Waste Management Division at (603) 271-1165.

Sincerely,


COPY
Lynn A. Woodard, P.E.
Supervisor
Oil Compliance and Initial Response Section

CERTIFIED MAIL #7099 3400 0002 9772 3781
cc: George Dana Bisbee, Assistant Commissioner
Gretchen Rule, DES Legal Unit ✓
Fred McGarry, P.E., Chief Engineer, WMD
George Lombardo, P.E., WMD
Tom Beaulieu, WMD
Health Officer, Town of Jaffrey

***** RETURN THIS PAGE ONLY *****

APPEARANCE

I desire a hearing in accordance with Env-Wm 1401 regarding the Permit.

Name: _____ Title: _____
(Please type or print legibly) (Please type or print legibly)

Signature Date: _____

WAIVER OF HEARING

I certify that I understand my right to a hearing regarding the revocation of the Permit and that I hereby waive those rights.

Name: _____ Title: _____
(Please type or print legibly) (Please type or print legibly)

Signature Date: _____

Please return to:

James Ballentine, DES Enforcement Paralegal
Department of Environmental Services
PO Box 95
Concord, NH 03302-0095